Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

Second Appeal No. 312 /2006

APPELLANTS :1. Smt. Laxmi Khare,
W/o. Shri Anil Khare,

2. Minor Ajay Khare,
S/o. Anil Khare,

3. Minor Ku. Swarnima Khare
D/o. Shri Anil Khare,
Through natural guardian mother Smt. Laxmi Khare wife of Anil Khare
All resident of 12/467, Ganjpara, Ward No.12, Raipur, Tahsil and District Raipur (C.G.)

P.R. No. 1852/06
Presented by Shri Rajesh Sahu
dated 30/06/06

VERSUS

RESPONDENTS: 1. Smt. Krishna Bai, W/o.Keshav Prasad Khare, aged about 56 Years, R/o. Sanjay Nagar, near school, Tikrapara, Raipur (C.G.) at present resident of near Stadium, Jabalpur Road, Civil Ward No.3, Damoh, District Damoh, (M.P.)

2. Anil Khare, S/o.Keshav Prasad Khare, Through – Madan Lal Girdhari Lal Sharma, resident of Athariya Ramsagarpara, Raipur Tahsil and District Raipur (C.G.)

3. Pravin Khare, S/o. Shri Keshav Prasad Khare, resident of Sanjay Nagar near school, Tikrapara, Raipur Tahsil and District Raipur (C.G.)

4. Shri Satish Khare Rathi, son of not known, resident of opposite C.P. Rice Mill, Station Road, Raipur (C.G.)

SECOND APPEAL U/S. 100 OF THE CODE OF CIVIL PROCEDURE

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No.312/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.11.2006

Shri Gautam Khetrapal, counsel for the appellants.

Heard on admission.

Plaintiffs/appellants have filed this second appeal against the judgment and decree dated 04.04.2006 passed in Civil Appeal No.1-A of 2004 by the 10th Additional District Judge, Raipur whereby the dismissal of the plaintiffs' suit for declaration and permanent injunction, vide judgment dated 30.11.1998 passed in Civil Suit No.139-A of 1995 by the First Civil Judge Class-I, Raipur was affirmed.

Undisputed facts are that the plaintiff/appellant Laxmi Bai is the wife of defendant No.2-Anil Khare and Plaintiffs No. 2 & 3 are their son and daughter respectively. The respondent No.1/defendant-Smt. Krishna Bai is the mother of Anil Khare. Late Smt. Janak Dulari, defendant No.1 (since dead) was the mother of respondent-defendant No.1-Smt. Krishna Bai. It is also not disputed that late Virendra Nath Shrivastava had constructed a house No.12/467 in Ganjpara, Raipur out of his self-acquired property. Virendra Nath Shrivastava died on 05.11.1981. The suit house came to be recorded in the names of his widow late Smt. Janak Dulari and daughter respondent No.1-Krishna Bai. Late Smt. Janak Dulari and Smt. Krishna Bai entered into an agreement to sell the suit house to one Satish Khare Rathi, respondent No.4.

The plaintiff/appellants filed a Civil Suit for declaration that they were co-owners of the suit house which was joint property of Hindu Undivided Family of late Virendra Nath Shrivastava. Since late Smt.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Janak Dulari and Smt. Krishna Bai had entered into an agreement to sell the suit house to one Satish Khare, relief of permanent injunction was also prayed for.

The learned First Civil Judge, Class-II, Raipur dismissed the suit on the ground that late Shri Virendra Nath Shrivastava had constructed the suit house after obtaining permanent patta on Government Nazul land. After his death, the suit house devolved upon late Smt. Janak Dulari and Smt. Krishna Bai, being the heirs in class-I of schedule under Section 8 of the Hindu Succession Act 1956. The suit house also came to be recorded in the name of late Smt. Janak Dulari and Smt. Krishna Bai. The suit property not being the ancestral property of the husband of the plaintiff No.1, no right or title accrued to the plaintiffs over the suit property. On these premises, the suit for declaration of title and permanent injunction filed by the plaintiff was dismissed. Aggrieved by the judgment and decree passed in Civil Suit No.139-A of 1995, the plaintiffs/appellants preferred First Appeal which was also dismissed vide judgment and decree dated 04.04.2006 passed by the 10th Additional District Judge, Raipur in Civil Appeal No. 1-A of 2004.

Shri Gautam Khetrapal, learned counsel for the appellants did not point out any perversity or legal ground to assail the abovementioned findings recorded by the Lower Court and affirmed by the first appellate Court. The suit property being self-acquired property of late Shri Virendra Nath Shrivastava, who had died intestate, devolved upon his death on 05.11.1981 on his wife late Smt. Janak Dulari and daughter Smt. Krishna Bai. Anil Khare, respondent No.2 herein or the plaintiffs did not even a semblance of title over the suit property under law in the presence of the heirs being the relatives, as

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	specified in class I of the schedule mentioned in Section 8 of the Hindu Succession Act, 1956. Thus, no substantial question of law arises for decision-making in this Second Appeal, which is dismissed at the stage of admission. Application (M.C.P.No.1141 of 2006) for stay also stands disposed of. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	

P.T.O.